No. 84-776
No. 84-835

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

STATE OF NEW JERSEY,
Department of Corrections,
Petitioner,

v.

RICHARD NASH,
Respondent.

PHILIP A. CARCHMAN,
Mercer County Prosecutor,
Petitioner,

v.

RICHARD NASH,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

BRIEF OF THE UNIVERSITY OF VIRGINIA SCHOOL OF LAW POST-CONVICTION ASSISTANCE PROJECT AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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This brief is filed pursuant to Rule 36.2 of this Court. Consent to file has been granted by James J. Ciancia, Esq., Assistant Attorney General for the State of New Jersey, Counsel for Petitioner in No. 84-835, by Philip S. Carchman, Esq., Mercer County Prosecutor, Counsel for Petitioner in No. 84-776 and by John Burke, Esq., Assistant Deputy Public Defender for the State of New Jersey, Counsel for Respondent.

INTEREST OF THE AMICUS CURIAE

The Post-Conviction Assistance Project (P-CAP) is a Virginia nonprofit corporation organized and staffed by student volunteers at the University of Virginia School of Law. Since its establishment in 1971, P-CAP has advocated respect for the often ignored rights of those confined in our nation's prisons. Despite waning student concern for public interest law and budgetary constraints that severely limit such efforts, P-CAP members interview arrestees daily in preparation for bail hearings, help prisoners with problems navigate the corrections bureaucracy, visit youths at a local juvenile home, and answer requests for legal materials from pro se inmate litigants. Pursuant to third-year practice rules, P-CAP members represent prisoners in federal habeas corpus and civil rights suits before Uni-

ted States District Courts and the United States Court of Appeals for the Fourth Circuit.

P-CAP receives its funding from the University of Virginia Law School Foundation, from the University of Virginia Student Council, and from private donations. It has no financial interest in the outcome of this case.

P-CAP's interest as amicus curiae arises from its experience working with inmates from all over the country. This experience has made P-CAP aware of the harm detainers do to inmate rehabilitation and of the benefits that the Interstate Agreement on Detainers (IAD) has produced for inmates and society at large. Prompt disposition of detainers under the IAD encourages effective rehabilitation and fair resolution of the warrants underlying detainers. The concern of the amicus

curiae is that IAD be interpreted in accord with legislative policy to provide for prompt resolution of all major types of detainers.

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SUMMARY OF ARGUMENT

A state is never compelled to place a detainer on an inmate. If a state wishes to obtain custody of an inmate without placing a detainer it may do so via the

extradition process. Detainers impose a severe burden on inmates' and society's interests in rehabilitation -- a burden that the Interstate Agreement on Detainers (IAD) is designed to reduce. When a state chooses to damage rehabilitation by placing a detainer, then the detainer should be subject to the IAD, so that the harm may be mitigated in accordance with legislative design.

Applying the IAD to parole and probation detainers will result in some additional costs for the states. However, probation and parole detainers burden rehabilitation in exactly the same way detainers based on criminal indictments do. Both classes of detainers, identical in effect, should be subject to the same rules. In that way, a state will not be encouraged to place parole and probation detainers that it never intends to prosecute, thereby pun-

ishing an inmate at the expense of society and a sister state.

Of course, a state may avoid the costs of the detainer system entirely by not filing a detainer. Furthermore, few prisoners are likely to take advantage of the opportunity to have prompt revocation hearings, because it will often be to a prisoner's advantage to delay a decision.

Prompt disposition of parole and probation violation detainers serves the purposes of the IAD. And the cost objections raised to applying the IAD to these detainers are not substantial. Therefore, it is highly unlikely that the drafters of the IAD and the legislators who enacted it meant to exclude parole and probation violation detainers from the IAD's mechanisms. The Court of Appeals correctly found, consistent with legislatively-established policies, that the general lan-

guage of the IAD should be interpreted to place probation and parole detainers within the mechanism of the IAD's Article III. Nash v. Jeffes, 739 F.2d 878 (3d Cir. 1984), cert. granted, 105 S. Ct. 902 (1985).

ARGUMENT

I. THE BROAD LANGUAGE OF THE INTERSTATE AGREEMENT ON DETAINERS INCLUDES PAROLE AND PROBATION VIOLATION DETAINERS.

The Interstate Agreement on Detainers, N.J. Rev. Stat. §§ 2A:159A-1 to -9 (1971), (hereinafter the IAD or the Agreement) was drafted in 1956 by the Committee on Detainers and Sentencing and Release of Persons Accused of Multiple Offenses. The committee met under the auspices of the Council of State Governments. See Council of State Governments, Suggested State Legislative Program for 1957, at 74-85 (1956). The Agreement was the culmination

of a process that began eight years before, when the Joint Committee on Detainers, the forerunner of the committee that drafted the IAD, first met and began searching for a way to reduce the harm to society and to prisoners caused by detainers' interference with rehabilitation. See Council of State Governments, The Handbook of Interstate Crime Control 85-91 (1949). With this Court's decision in Smith v. Hooey, 393 U.S. 374 (1969), establishing constitutional speedy trial rights for state prisoners serving time for other crimes, the IAD began to serve the purpose of protecting prisoners' constitutional right to a speedy trial.

The committee that drafted the IAD was faced with a serious problem. The evils of the detainer system had received substantial attention, but it was apparent that voluntary cooperation between the

states was not effective in controlling abuse in the system. See Council of State Governments, Suggested State Legislative Program for 1957, at 74-76. The committee met only four times, twice in 1955 and twice in 1956. Id. They produced an imperfectly drafted statute. As this Court observed when it decided United States v. Mauro, 436 U.S. 340 (1977), the drafters even neglected to define the word "detainer." Nevertheless, the drafters achieved a balance of fairness between the interests of prisoners and society in rapid disposition of charges and the need for a manageable and efficient system for interjurisdictional transfers of inmates.

The language of the IAD sheds limited light on whether Article III of the Agreement was meant to cover detainers based on

parole and probation violations.[1] Article I states:

> The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints ... produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints.

N.J. Rev. Stat. § 2A:159A-1 (1971) (emphasis added). Article III repeats this language in a slightly different form: "[W]henever during the continuance

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[1]The Court of Appeals did not consider the issue of whether a parole violation detainer should be subject to the IAD. Nash v. Jeffes, 739 F.2d 878, 883 n.11 (3d Cir. 1984). However, this Court, in granting the writ of certiorari, indicated an intention to address this issue. 105 S. Ct. 902 (1985). Accordingly, amicus curiae will address both probation and parole violation detainers.

of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days [of completing proper notice procedures]." N.J. Rev. Stat. § 2A:159A-3 (1971). Whether this language includes parole and probation violation detainers is not immediately clear without reference to the legislatively-established purposes of the IAD.

Nevertheless, the above-emphasized language from Article I, using the word "charges" to describe the scope of the Agreement, would seem to encompass parole and probation violation detainers. Article III, in dropping that language, might be seen as inexplicably narrowing the kinds of detainers meant to be encom-

passed by the IAD. However, since the language is unclear, consideration of the legislative purposes of the Agreement indicates that the language of Article I shall control. Nash v. Carchman, 558 F. Supp. 641, 644 (D.N.J. 1983), aff'd sub nom. Nash v. Jeffes, 739 F.2d 878 (3d Cir. 1984), cert. granted, 105 S. Ct. 902 (1985). Article IX of the Agreement mandates that courts interpret the IAD "so as to effectuate its purposes." N.J. Rev. Stat. § 2A:159A-9 (1971). Those purposes are laid out in the language of Article I, demonstrating that the drafters intended that language to control questions of the IAD's interpretation.

The legislative history of the IAD supports the view that parole and probation violation detainers are subject to the provisions of Article III. The Council of

State Governments' description of the IAD includes a definition of the word detainer which explicitly includes parole violation detainers:

> A detainer may be defined as a warrant filed against a person already in custody with the purpose of insuring that he will be available to the authority which has placed the detainer. ... Such detainers may be placed by various authorities under varying conditions, for example, when an escaped prisoner or a parolee commits a new crime and is imprisoned in another state.

Council of State Governments, Suggested State Legislative Program for 1957, at 74 (emphasis added).

To look at the question from another angle, reading the language "indictment, information or complaint" as strictly limiting the application of Article III produces unsatisfactory results. In Virginia, for example, a grand jury is entitled to indict an individual of its own

accord, without the participation of the prosecutor. Va. Code § 19.2-216 (1983). This form of process is called a "presentment." A strict reading of this language would exclude detainers based on presentments from the mechanism of Article III, although such detainers, like those based on probation and parole violations, are plainly within the legislative rationale for the Agreement.

Equally unsuitable results will occur if the words "untried" and "trial" from Article III are read to support the inference that only detainers based on criminal charges are covered by Article III. For example, under this reading a prisoner who used the IAD to clear an outstanding charge and then was diverted from trial with the opportunity of having the charges dropped in the future might later attack the charge by arguing that the IAD re-

quired that he be brought to trial. Again, Article I helps with this problem by speaking more accurately of the "disposition" of outstanding charges.

Even if the language "indictment, information or complaint" is read to somehow narrow the applicability of Article III, it is itself broad enough to encompass parole and probation violation detainers. The words indictment and information have well-understood, technical meanings. The word complaint, however, has a broader meaning. Nash v. Carchman, 558 F. Supp. at 643-44. It is part of our everyday vocabulary as a generic term for all kinds of criminal charges.

II. THE LEGISLATIVE HISTORY AND PURPOSES OF THE IAD DEMONSTRATE THAT PAROLE AND PROBATION VIOLATION DETAINERS ARE SUBJECT TO ARTICLE III.

As the Court of Appeals in this case pointed out, the courts that have reached

the conclusion that parole and probation violation detainers are not subject to Article III of the Agreement did not give adequate consideration to the legislatively-mandated purposes of the IAD. Nash v. Jeffes, 739 F.2d 878, 882 (3d Cir. 1984), cert. granted, 105 S. Ct. 902 (1985).[2] These decisions are in direct contrast to the approach this court has previously taken in IAD cases. In both Cuyler v. Adams, 449 U.S. 433 (1981), and United States v. Mauro, 436 U.S. 340

[2]An example of the overly narrow approach criticized by the court in Nash occurs in United States v. Roach, 745 F.2d 1252, 1253 (9th Cir. 1984). The court in Roach refused to look at the legislative history of the IAD, although this Court has stated "[w]hen aid to construction of the meaning words, as used in the statue, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" United States v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543-44 (1940).

(1978), this Court conducted an "analysis of the purposes of the agreement and the reasons for its adoption" before reaching a decision. See Cuyler, 449 U.S. at 447-50; Mauro, 436 U.S. at 349-50, 359-61.[3]

[3]Cuyler v. Adams, 449 U.S. 433 (1981), held that the IAD presents a federal question under 42 U.S.C. §§ 1981, 1983 (1982). This court has not addressed the issue of whether federal habeas corpus relief under 28 U.S.C. § 2254 (1982) is available for Article III violations. Amicus curiae believes that such relief should be available. However, there is considerable division of opinion among the courts of appeals on the extent of federal habeas corpus relief available for IAD violations. For illustrative cases see Hopper v. United States Parole Comm'n, 702 F.2d 842, 846 n.3 (9th Cir. 1983) (relief available under 28 U.S.C. §§ 2241, 2254, 2255 (1982) for violations of Article III(a)); Cavallaro v. Wyrick, 701 F.2d 1273, 1275 (8th Cir.), cert. denied, 103 S. Ct. 3120 (1983) (relief available under § 2241 for failure to provide a pre-transfer hearing after an Article IV request); Johnson v. Williams, 666 F.2d 842, 844 n.1 (3d Cir. 1981) (relief available under § 2254 for violations of Article IV(e)); Bush v. Muncy, 659 F.2d 402, 409 (4th Cir. 1981), cert. denied, 455 U.S. 910 (1982) (relief not available under § 2254 for violations of Article IV(e)); Cody v. Morris, 623 F.2d 101, 103 (9th Cir. 1980)

A. The IAD Is Designed to Protect Society's and Inmates' Interests in Rehabilitation.

The primary purpose of the IAD, as stated in Article I, is to promote both society's and prisoners' interests in rehabilitation by providing an efficient mechanism for the disposition of outstand-

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[3] (cont'd) (relief available under § 2254 for violations of Article IV(c)); Fasano v. Hall, 615 F.2d 555, 558 (1st Cir.), cert. denied, 449 U.S. 867 (1980) (no relief available for IAD violations); Mars v. United States, 615 F.2d 704, 707 (6th Cir.), cert. denied, 449 U.S. 849 (1980) (relief not available under § 2255 for violations of Article IV (e)); United States v. Williams, 615 F.2d 585, 589-90 (3d Cir. 1980) (relief available under § 2255 for violations of article IV(e)); Hitchcock v. United States, 580 F.2d 964, 966 (9th Cir. 1978) (relief not available under § 2255 for violations of Article IV(e)); Echevarria v. Bell, 579 F.2d 1022, 1024-25 (7th Cir. 1978) (relief available under § 2254 for violations of Article IV(e)); Edwards v. United States, 564 F.2d 652, 653 (2d Cir. 1977) (relief not available under § 2255 for violations of Article IV(e)).

ing charges.[4] The legislative history of the Agreement conclusively establishes this purpose. The commentary accompanying the promulgation of the IAD by the Council of State Governments describes the evils of the detainer system:

> The prison administrator is thwarted in his efforts toward rehabilitation. The inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program. He often must be kept in close custody, which bars him from treatment such as

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[4] The IAD is not a statute designed to protect the constitutional right to a speedy trial. This Court's decision in Smith v. Hooey, 393 U.S. 374 (1969), played a role in the congressional ratification of the Agreement, but as this section demonstrates, the Congress was equally concerned with rehabilitation. There is no indication whatsoever that the statute was drafted with constitutional speedy trial considerations in mind. The drafting took place twenty years before constitutional speedy trial rights were extended to prisoners of the states. The IAD's usefulness in protecting speedy trial rights is a product of historical accident, not legislative design.

> trustyships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions he is not eligible for parole; there is little hope for his release after an optimum period of training and treatment .... Instead, he often becomes embittered with continued institutionalization and the objective of the correction system is defeated.
> ....
> ... Ironically, society is the real loser in collecting its debt from the offender. Much money is spent in extra periods of imprisonment, and embittered offenders become recidivists, pyramiding the expense of law enforcement.

Council of State Governments, Suggested State Legislative Program for 1957, at 74.

Congress was also worried about the harm to rehabilitation as it considered the IAD. Two examples from the House of Representatives and Senate committee reports will suffice to demonstrate the congressional concern. (The reports are virtually identical.) The reports state, under the heading "The Need for the Legislation," that "[a]lthough a majority of detainers filed by States are withdrawn near the conclusion of the Federal sentence, the damage to the rehabilitation program has been done because the institution staff has not had sufficient time to develop a sound prerelease program." H.R. Rep. No. 91-1018, 91st Cong., 2d Sess. 3 (1970); S. Rep. No. 91-1356, 91st Cong., 2d Sess. 3 (1970). A letter from Graham W. Watt of the Government of the District of Columbia included in both reports and urging ratification of the IAD explains:

> There is substantial agreement among prison authorities that the presence of outstanding detainers has an adverse psychological effect upon prisoners and substantially impedes the establishment of any meaningful rehabilitative program for them. Not only do prisoners against whom detainers have been lodged present greater behavioral and security problems, but the planning of any realistic treatment program involving parole, work release, training, continuing

> education, or other community-oriented activities becomes difficult, if not impossible.

H.R. Rep. No. 91-1018, 91st Cong., 2d Sess. 7 (1970); S. Rep. No. 91-1356, 91st Cong., 2d Sess. 7 (1970). See also H.R. Rep. at 5; S. Rep. at 5 (letter from Deputy Attorney General Kleindienst).

B. Parole and Probation Violation Detainers Severely Damage Rehabilitation Efforts.

The legislative history demonstrates that the purpose of the IAD is to reduce detainers' destructive effects on rehabilitation. The harm to rehabilitation is caused by the severe deprivations an outstanding detainer visits upon an inmate:

> [T]he inmate is (1) deprived of an opportunity to obtain a sentence to run concurrently with the sentence being served at the time the detainer is filed; (2) classified as a maximum or close custody risk; (3) ineligible for initial assignments to less than maximum security prisons. . . .; (4) ineligible for

> trustee status; (5) not allowed to live in preferred living quarters such as dormitories; (6) ineligible for study-release or work-release programs; (7) ineligible to be transferred to preferred medium or minimum custody institutions within the correctional system, which includes the removal of any possibility of transfer to an institution more appropriate for youthful offenders; (8) not entitled to preferred prison jobs which carry higher wages and entitle them to additional good time credits against their sentence; (9) inhibited by the denial of possibility of parole or any commutation of his sentence; (10) caused anxiety and thus hindered in the overall rehabilitation process since he cannot take maximum advantage of his institutional opportunities.

Cooper v. Lockhart, 489 F.2d 308, 314 n.10 (8th Cir. 1973). These hardships are identical for detainers based on parole and probation violations and for those based on outstanding criminal indictments. L. Abramson, Criminal Detainers 85 (1979). Therefore, the harm to rehabilitation

caused by both classes of detainers is identical.

Since the purpose of the IAD is to mitigate the adverse effects of outstanding detainers on rehabilitation, and since the effects on rehabilitation of outstanding parole and probation violation detainers are identical to the effects of outstanding criminal indictment detainers, it is highly improbable that the drafters would have excluded parole and probation violation detainers from the mechanisms of the IAD.

C. There Is No Persuasive Justification for Excluding Probation and Parole Violation Detainers from the Mechanisms of the IAD.

The commonly advanced rationales for excluding parole and probation violation detainers from the provisions of the IAD are not convincing. There are two points to be kept in mind as these arguments are

examined. First, the IAD is a two-way street. It gives the prisoner a way to compel the state to provide for disposition of charges underlying a detainer, but under Article IV it also provides the state with a streamlined procedure for obtaining custody of the prisoner if it so desires. N.J. Rev. Stat. § 24:159A-4 (1971). In IAD cases the temptation is to focus too closely on the benefit that the Agreement provides to prisoners, and to lose sight of the benefits provided to states by efficient mechanisms for disposing of detainers and to society by more effective use of resources devoted to corrections.

Second, the state is never required to lodge a detainer against a prisoner. The state may obtain a parole or probation violator through the normal extradition process if it wishes to avoid the oper-

·tion of the IAD. See N.J. Rev. Stat. § 2A:160-32 (1971). When a state places a detainer, it is aware of the severe consequences it will have for the inmate. It is fair that the state should then be subject to the IAD, which is designed to mitigate those consequences. This is particularly true when the state has another way to obtain custody of the inmate which avoids those consequences. As a Florida court pointed out in applying the IAD to a probation violation detainer, "[I]t is paradoxical for the State to attempt to utilize a detainer to insure Gaddy's presence following completion of his Georgia sentence, but to contend that it need not comply with procedural requirements imposed by the Detainers Act." Gaddy v. Turner, 376 So. 2d 1225, 1228 (Fla. Dist. Ct. App. 1979).

The primary objection raised by the State in this case is that including parole and probation detainers under the IAD will result in increased costs. The obvious response is to repeat that the State need not file a detainer at all, and may avoid any costs imposed by the IAD. If the state chooses to burden prisoners with detainers, it should bear the minor increase in administrative costs of keeping a closer watch on the detainer's status.

The objection, however, seems not to be to administrative costs, but to the increased costs of transporting prisoners to the jurisdiction in order to have hearings. That argument is flawed, unless a state never intends to pursue adjudication of the charges underlying these detainers. If a State is serious about pursuing a parole or probation violation charge, the

cost of bringing the prisoner to the jurisdiction must be paid.

If the prisoner requests disposition, a state must pay the cost of returning the prisoner after his hearing. That cost should be considered the "price" of placing a detainer. From the standpoint of the legislatively-established purpose of avoiding harm to rehabilitation, there is no distinction between parole and probation violation detainers and criminal indictment detainers. When a state chooses to place either type of detainer on an inmate, that state should bear an identical cost burden, since that state has imposed an identical burden on rehabilitation.

Applying the IAD to parole and probation violation detainers further prevents harm to rehabilitation by discouraging the filing of frivolous detainers. Raising

the cost issue is a way for the State to attempt to justify the abusive practice of placing detainers in order to punish the prisoner, and then withdrawing the detainer before having to bear the cost of bringing the prisoner to the jurisdiction for the hearings required by the due process clause of the Constitution. In this way the a State can punish an inmate for a parole or probation violation without ever having to provide or pay for the due process protections constitutionally mandated by this Court's decisions in Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471 (1972).

That this abuse occurs regularly cannot be doubted. The legislative history of the IAD before the Congress points out that most state detainers placed on federal prisoners are withdrawn just before the federal sentence is completed.

H.R. Rep. No. 91-1018, 91st Cong., 2d Sess. 3 (1970); S. Rep. No. 91-1356, 91st Cong., 2d Sess. 3 (1970). Evidence of this abuse is present throughout the IAD literature. As one article states, "[m]any detainers are filed for punitive reasons and are later withdrawn or not enforced, having served their purpose by curtailing prison privileges and preventing parole." Jacob & Sharma, Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correction Process, 18 U. Kan. L. Rev. 494, 582 (1970); see also 11 Uniform Laws Annotated 322 (1968).

In any case, it is not likely that prisoners will flock to take advantage of the provisions of Article III if they are held applicable to parole and probation violations, so costs should not rise substantially. In the first place, in most

cases the conviction for which the prisoner is serving a sentence will be conclusive proof of the violation, so the prisoner may wait and hope the detainer is withdrawn. See Morrissey v. Brewer, 408 U.S. 471, 490 (1972). Furthermore, since an excellent institutional record is a valuable piece of evidence for the prisoner in his hearing, he may wish to wait if he feels his chance of avoiding revocation will be better after compiling such a record. Moody v. Daggett, 429 U.S. 78, 89 (1976). It will not be a substantial burden on the states to afford prompt hearings to those few prisoners who wish to try to settle the violation in order to have a better idea of when they might be released, or who feel they have a chance for imposition of a concurrent sentence.

While the amicus curiae have argued that both parole and probation violation de-

tainers are subject to the mechanism of Article III, there is an additional administrative cost associated with subjecting parole detainers to the IAD. Article III requires that notice be provided to the court and the prosecutor of a request for disposition of charges underlying a detainer. Parole charges are generally handled by state parole boards, so the notice requirements of the statute would require a state to provide a mechanism for transmitting notice to the appropriate authorities. That is not an overwhelming difficulty, however. For instance, Virginia law already requires that a Commonwealth's Attorney and Circuit Court become involved in parole revocations any time an attorney is appointed to represent the violator. Va. Code Ann. § 53.1-165 (1982).

A state is never required to place a detainer. However, if it chooses to burden an inmate with the penalties a detainer brings with it, then it should not begrudge the inmate the opportunity to dispose of the detainer by facing the underlying charges. In applying the IAD to parole and probation violation detainers, this Court would place no significant burdens on the states and would allow prisoners, if they so desire, promptly to face justice. The result benefits not only inmates, but also society, by protecting the opportunities for rehabilitation. It is difficult to believe that under these circumstances the drafters of the IAD and the legislators who enacted it could have meant to exclude parole and probation detainers from the mechanisms of the Agreement.

CONCLUSION

For the foregoing reasons, amicus curiae believes that this Court should affirm the decision of the Court of Appeals.

Respectfully submitted,

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